

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Joint Petition for Expedited Rulemaking)	
Establishing Minimum Notice Requirements)	CI Docket No. 02-22
For Detariffed Services)	
)	

WORLDCOM COMMENTS

Pursuant to the Federal Communications Commission’s (“Commission”) *Public Notice* released on February 6, 2002, (DA 02-271), WorldCom, Inc. (“WorldCom”) hereby offers comments on the Joint Petition requesting the Commission to initiate a rulemaking proceeding to establish a minimum notice requirement for recently detariffed domestic toll services.¹ WorldCom does not oppose the initiation of a rulemaking proceeding to consider the question of establishing an advance notification requirement. WorldCom would not, however, support the specific notification scheme proposed in the Joint Petition. If the Commission decides to impose an advance notification requirement, it should be flexible with regard to the means and timeframe allowed, at least less restrictive than proposed by the Petitioners.² Specifically, (1) any mandatory notice

¹ *In the Matter of Joint Petition for Expedited Rulemaking Establishing Minimum Notice Requirements for Detariffing Services; Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CI Docket No. 02-22, CC Docket No. 96-61, (filed Oct. 29, 2001)(Joint Petition).

² AARP, Consumer Action, Consumer Federation of America, Consumers Union, the Massachusetts Union on Public Housing Tenants, the National Association of Regulatory Utility Commissioners, the National Association of Consumer Agency Administrators, the National Association of State Utility Consumer Advocates, and the National Consumers League (Petitioners).

period should be applicable only to domestic direct dial 1+ rate increases to residential customers and (2) the notice period and form of notice (if any) adopted should balance the time needed for consumers' to process and act on information against the costs (financial, logistical and competitive) of forcing carriers to provide notice too far in advance or in a particular form. Furthermore, the Commission should make clear that its regulations control over state law or regulations, as a patchwork of notification rules will hamper carriers that provide national interstate products. In fact, in the absence of uniformity, the need and benefit of a Commission rule is unclear.

In its *Second Report and Order*, the Commission required non-dominant interexchange carriers to withdraw tariffs for most of their interstate, domestic, interexchange services.³ The Commission concluded that tariffs were unnecessary to protect consumers from unjust, unreasonable, and discriminatory rates. Rather it found that it could rely on market forces, the section 208 complaint process, and its authority to reinstate tariff requirements to serve this purpose.⁴ Under the tariff regime carriers were required to file changes to tariffs one day prior to the effective date.⁵ The Commission found that the majority of consumers did not review carrier tariff filings and that “[i]n the absence of tariffs, consumers will still receive rate information in the same manner they always have, through the billing process.”⁶ Petitioners claim that the service agreements of the four major IXCs “circumvented” additional consumer protections expected from a

³ *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, Second Report and Order, CC Docket No. 96-61, FCC 96-424 (adopted Oct. 29, 1996)(*Second Report and Order*). Subsequently, the Commission similarly required carriers to cancel their tariffs for most international interexchange services. *In the Matter of 2000 Biennial Regulatory Review Policy and Rules Concerning the International, Interexchange Marketplace*, IB Docket No. 00-202, FCC 01-93 (adopted Mar. 16, 2001).

⁴ *Second Report and Order*, para. 36. *See also*, Second Order on Reconsideration, CC Docket No. 96-61, FCC 99-47, para. 6 (adopted Mar. 18, 1999)(*Second Order on Reconsideration*).

⁵ *See*, *Second Report and Order*, para. 56.

competitive environment.⁷ As a result, Petitioners request the Commission initiate a rulemaking proceeding to establish a minimum notice requirement. Specifically, Petitioners request that the Commission require non-dominant IXCs provide “written notice to [their] presubscribed customers via bill insert, postcard, or letter, of any material change to the rates, terms or conditions at least thirty days before such change takes effect.”⁸

There are fundamental aspects of a competitive industry, and the long distance industry in particular, that must be considered. The long distance industry not only offers consumers ample choice in providers, but it is relatively easy for consumers to continually exercise that choice. While the petitioners characterize the current market as a “take it or leave it” attitude toward the customers, the ability of a consumer to choose another provider is an extremely powerful tool. As the Commission has found, “it is highly unlikely that interexchange carriers that lack market power could successfully charge rates, or impose terms and conditions, for interstate, domestic, interexchange services that violate sections 201 and 202 of the Communications Act *because consumers could simply switch to a competing provider that offered better rates, terms, and conditions.*”⁹ Obviously carriers value their customers and don’t want to lose them. Consequently, a carrier expends significant amounts of resources to determine what is, and what is not, important to a consumer and how it can accommodate these demands in the most cost efficient manner.

⁶ *Id.*, para. 25.

⁷ Joint Petition, p. 4.

⁸ Joint Petition, p. 7.

⁹ *Second Order on Reconsideration*, para. 6, *emphasis added*.

Indeed, for consumers to truly have a choice, carriers must be able to set themselves apart from each other. Terms and conditions, including policies regarding communication with the customer, are means of achieving distinction. Thus, although the Commission may find it reasonable to require some advanced notification, it should, as it has previously in other contexts, allow “carriers [to] satisfy these obligations in widely divergent manners that best fit their own specific needs and those of their customers.”¹⁰ MCI has found this balance with its 15-day advance notification policy for domestic dial 1+ rates, which contemplates the potential of notification via phone or email. MCI’s method for providing notice to its customers has been well received, and even called a “good deal” for consumers.¹¹

Thus, WorldCom does not oppose an advance notification requirement. But if the Commission requires advance notification of changes to consumers’ agreements, it should consider the following issues in its rulemaking:

Applicability. As stated above, any advance notification requirement adopted should be limited to domestic direct dial 1 + rate increases for residential customers. The regulation should not be applicable to business customers. As the Commission has previously recognized “ . . . large telecommunications users that usually negotiate [] long-term service arrangement possess sufficient leverage in the market to discourage nondominant carriers from choosing a course of conduct harmful to the users’

¹⁰ *In the Matter of Truth-in-Billing and Billing Format*, First Report and Order, CC Docket No. 98-170, FCC 99-72, para. 9 (Adopted Apr. 15, 1999).

¹¹ Jane Bryant Quinn, “Long Distance Relationship is Changing,” Contra Costa Times, July 30, 2001 [MCI says you’ll get a separate notice of every change in writing, by phone or by e-mail with your consent. Good deal.”] *reprinted in* Washington Post, p. H2 July 29, 2001, as “FCC Bows Out of Long Distance Picture”; Baltimore Sun, p. 3D, July 30, 2001 as “New Day for Long Distance Users After August 1”; and San Francisco Chronicle, p. D1, July 21, 2001 as “Long distance carriers required to come clean with customers”; *See also*, Paul Davidson, “States may take on long-distance firms. At issue: How consumers

interests.”¹² Terms of the contract, such as permissibility and process for rate increases, are negotiated between the customer and the carrier. The Commission should not interfere in the negotiating process between these parties. Additionally, the imposition of a notice requirement would serve no purpose to a customer subject to a term agreement, and thus function solely a needless cost. Moreover, if the Commission were to apply such a regulation to these services, it would have to consider whether agreements previously entered into, particularly those which contemplated this matter with a different result, are subject to change.

Additionally, requiring notification on international services would be extremely burdensome to carriers, if not impossible, and non-beneficial to the vast majority of consumers. International rates are numerous and frequently adjusted to account for the constantly changing underlying costs. Moreover, the average customer’s use of the service is substantially less than domestic dial 1+. The majority of consumers will be unwilling to pay the high costs associated with a direct advance notification regarding international rates.

Lastly, a regulation regarding “any material change in rates, terms and conditions” is vague and subjective, and therefore ineffective. It is unlikely the Commission could justify, with a cost/benefit analysis, the cost of an advance notification requirement for changes other than *increases* in domestic dial 1 + rates. Telephone service is unique in that customers who subscribe to it receive services beyond the core product (i.e. in addition to dial 1 long distance, they have the ability to place operator

find out about rate increases,” USA TODAY (Jul. 27, 2001)[“MCI is the only big carrier vowing to contact consumers directly in writing or by phone.”]

¹² See *In the Matter of Tariff Filing Requirements for Nondominant Common Carriers*, Memorandum Opinion and Order, CC Docket No. 93-36, para. 25 (rel. Aug. 18, 1993).

assisted calls, etc.). Many customers do not make use of all of these additional services, and would not want to have their rates increase in order to cover the cost of receiving written notice of changes to them. Customers who are concerned about changes to these additional services can consult the Company's web site or call the Company for information.

Extent of Advance Notification. If the Commission decides to establish a minimum time-period for advance notification, it should be significantly less than the 30-days proposed in the Joint Petition. In determining the amount of advance notification necessary, the Commission should look carefully at consumer needs and then balance those needs against carrier costs. The point of providing advanced notification is to allow customers to know that the terms of their agreement are changing, and to allow those consumers to decide whether to accept those changes or to choose to select a different carrier. In this regard, it is worth noting that MCI, and to MCI's knowledge most other carriers, have not imposed term contracts on their residential customers. Thus, once the consumer determines to make the switch to another provider, the switch can be accomplished relatively quickly and easily. It typically will only require a phone call to the new provider and subsequent confirmation through a verification process. This can all be accomplished in a day. It certainly does not take weeks or a month.¹³

The only issue for the customer, then, is that he or she receive notice in enough time to evaluate market alternatives. Long distance rates are highly marketed via television advertisements, telemarketing, newspaper ads, web postings, etc. In addition, the Commission requires all carriers that have web cites to post the rates, terms and

¹³ In fact, if consumers are given too much advance notification, they may put it aside to handle later and forget about it until they discover the rate change has taken affect.

conditions for their products on those web sites, specifically for the purpose of providing consumers the information necessary to make decisions on their phone service. Moreover since long distance phone service is a product to which nearly everyone subscribes, a consumer need only inquire of friends, family and co-workers as a means of comparison shopping. Thus, consumers do not need to perform extensive, time-consuming research to find the information.

Balanced against this, are the costs to carriers. Given that carriers bill on a 30-day billing cycle, it is difficult to insure that all customers will receive the required notice within the proposed period even if changes are noted in the prior month's bill cycle. The notice period would have to be somewhat shorter than 30-days to avoid some customers receiving notice far in advance of a change. Similarly, the further in advance that carriers must notify their customers of changes, the less flexibility carriers have to respond to competitive market conditions and changes to its underlying costs. This is hardly the result that the Commission hoped to achieve with detariffing.

Form of Communication: The Commission should not dictate the form of communication between a carrier and its customers, at least not as restrictive as the joint petition proposes. Even with regard to dial 1+ rates, mail notice may not always be the best alternative. MCI's policy that includes the possibility of phone or email messages as been viewed favorably.¹⁴ Customers, particularly ones acquired through, and therefore receptive to, telemarketing may be more appreciative and attentive to a phone message than a written notice. Customers that receive their bills via email or the Internet have obviously express a preference for electronic communication over written notices.

¹⁴ See *supra* n. 12.

Carriers should be free to accommodate customer demands, rather than be bound by a Commission mandate.

Uniformity. In adopting a minimum advance notice requirement, the Commission must ensure that the rules are consistent nationwide. Interstate long distance service is generally marketed nationally, and requirements that vary from state to state require carriers to expend substantial time and resources to monitor and comply with these various requirements. Even if carriers wanted to design their products to meet state-specific demands, they would be prevented from doing so by federal geographic deaveraging requirements.¹⁵ In this regard, the costs imposed by one state's requirements effect all consumers, not just those of that state. If the Commission imposes a requirement that is in addition to, rather than in place of, state requirements it will be burdening carriers with needless and unreasonable costs, that will ultimately be born by consumers. Thus, any Commission regulation on this matter should make clear that state requirements cannot apply. Indeed, if a Commission imposed a notice period that would not function as both a ceiling and a floor, the reasons for new rules become difficult to discern.

In conclusion, WorldCom does not oppose the initiation of a rulemaking proceeding to consider the question of establishing an advance notification requirement. WorldCom would not, however, support the specific notification scheme proposed in the Joint Petition. As discussed above, if the Commission decides to impose a mandatory advance notification period, it should be reasonable in time and form, and it should apply

¹⁵ When the Commission decided to forbear from tariff requirements for interstate, domestic, interexchange services, it concluded that carriers providing these services would be subject to state consumer protection and contract laws. Second Report and Order, para. 5. Requiring that any notice period be nationally

only to domestic dial 1+ rate increases effecting residential customers. The Commission should also make clear that its regulations govern advance notification requirements, state law or regulations do not apply, for recently detariffed services.

Respectfully submitted,
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/s/

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March 11, 2002

uniform would not be inconsistent with this view, however, because nationwide notice is consistent with superceding federal geographic deaveraging law.

CERTIFICATE OF SERVICE

I, Vivian Lee, do hereby certify that copies of the foregoing Comments of WorldCom, Inc. were sent via first class mail, postage paid, to the following on this 11th day of March 2002.

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*Electronically Delivered

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